

damages \$180,000 in excess of the \$750,000 statutory cap—meaning that application of the cap would reduce the judgment by \$180,000—the constitutionality of the cap is ripe for determination.

The issue of whether Tenn. Code Ann. § 29-39-102 violates the Tennessee Constitution was presented to the Tennessee Supreme Court in *Clark v. Cain*, 479 S.W. 3d 830 (Tenn. 2015). There, the Court found that the issue was not ripe because the case was at the summary judgment stage. Here, however, ripeness is beyond dispute because judgment has been entered, and the jury award for non-economic damages exceeds the statutory cap.

On May 3, 2018, the United States Court of Appeals for the Sixth Circuit (properly seeking to anticipate how the Tennessee Supreme Court would decide the issue) held that Tennessee’s statutory cap on punitive damages, found at Tenn. Code Ann. § 29-39-104, “violates the individual right to a trial by jury set forth in the Tennessee Constitution.” *Lindenberg v. Jackson Nat’l Life Ins. Co.*, 912 F. 3d 348, 364 (6th Cir. 2018). Like the Tennessee Supreme Court, however, the Sixth Circuit has not issued an opinion as to the constitutionality of the statutory cap on non-economic damages.

QUESTIONS OF LAW

Pursuant to Tennessee Supreme Court Rule 23, the following questions of state law have been raised by Plaintiff in this case and are hereby certified to the Supreme Court of Tennessee:

(1) Does the non-economic damages cap in civil cases imposed by Tenn, Code Ann. § 29-39-102 violate a plaintiff’s right to a trial by jury, as guaranteed in Article I, section 6, of the Tennessee Constitution?

(2) Does the non-economic damages cap in civil cases imposed by Tenn. Code Ann. § 29-39-102 violate Tennessee’s constitutional doctrine of separation of powers between the legislature branch and the judicial branch?

(3) Does the non-economic damages cap in civil cases imposed by Tenn. Code Ann. § 29-39-102 violate the Tennessee Constitution by discriminating disproportionately against women?

Pursuant to Tenn. Sup. Ct. R. 23, Sec. 4, the Clerk of Court is hereby directed to serve copies of this Certification Order upon all counsel of record in this case and file with the Clerk of the Tennessee Supreme Court in Nashville this Certification Order under the seal of this Court, along with proof of service.

The Court hereby designates Plaintiff Jodi McClay as the moving party for purposes of certification. The parties and their counsel of record are:


Jodi McClay

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IT IS SO ORDERED.


ELI RICHARDSON
UNITED STATES DISTRICT JUDGE